

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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WELLS FARGO BANK NA,

Plaintiff,

Case No. 24-cv-0835-bhl

v.

PATRICK FITZGERALD, BRITTANY  
FITZGERALD and DISCOVER BANK,

Defendants.

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**ORDER**

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On March 15, 2024, Plaintiff Wells Fargo Bank, N.A., commenced suit against Defendants Patrick Fitzgerald, Brittany Fitzgerald, and Discover Bank to foreclose on a mortgage. (ECF No. 1-1 at 22.) On July 3, 2024, well past the 30-day procedural deadline for removal, 28 U.S.C. § 1446(b)(1), the Fitzgeralds removed the case to this Court, invoking both federal jurisdiction and diversity jurisdiction. (ECF No. 1 at 1, 4.) In response, on September 6, 2024, Wells Fargo moved to remand the case. (ECF No. 5.)

The Fitzgerald's notice of removal is signed only by them. (ECF No. 1 at 8.) It is not signed by the other defendant in this case, Discover Bank. Indeed, at this point, Discover Bank has neither consented to removal nor otherwise appeared before the Court. Valid removal generally requires the consent of *all* defendants. *Northern Ill. Gas Co. v. Airco Indus. Gases, A Division of Airco, Inc.*, 676 F.2d 270, 271–72 (7th Cir. 1982) (citing *Chi., Rock Island, & Pac. Ry. Co. v. Martin*, 178 U.S. 245, 248 (1900)).

While Wells Fargo argues for remand on a variety of grounds, it does not address Discover Bank's failure to join in the removal. The Fitzgeralds' briefing does not address Discover Bank's absence either. (*See* ECF Nos. 5–7.) Given Discover Bank's failure to appear, it is unclear if Discover Bank is even aware that this case is now in federal court, let alone that it joins in the Fitzgerald's decision to remove the matter to this court. The Court will therefore order all parties—including Wells Fargo, the Fitzgeralds, and Discover Bank—to submit supplemental

briefing within 7 days, addressing Discover Bank's failure to consent to removal and how that failure affects removal and the pending motion to remand.

Accordingly,

**IT IS HEREBY ORDERED** that all parties must submit supplemental briefing on how Discover Bank's absence affects removal and the pending motion to remand, ECF No. 5, on or before **February 3, 2025**.

Dated at Milwaukee, Wisconsin on January 27, 2025.

*s/ Brett H. Ludwig*

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BRETT H. LUDWIG

United States District Judge